



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: BRIAN MCCORMICK
Regulatory and Manual Section Manager
Department of Medical Assistance Services

FROM: ELIZABETH A. MCDONALD
Special Counsel to DMAS

DATE: January 12, 2009

SUBJECT: Final Regulations Regarding Acute Long Term Care

I have reviewed the attached final regulations that will allow for newly enrolled recipients in the AIDS, Individual and Family Developmental Disabilities Supports (IFDDS), Mental Retardation (MR), Elderly or Disabled with Consumer Direction (EDCD), Day Support, or Alzheimer's Waiver programs to continue enrollment in the Medicaid Managed Care Organizations (MCOs) for their acute care medical needs. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services (DMAS) has the legal authority to promulgate the final regulations and if the final regulations comport with state and federal law.

Based on that review, it is this Office's view that DMAS has the authority, subject to compliance with the provisions of Article 2 of the Administrative Process Act (APA), and has not exceeded that authority.

It appears that several changes to the final regulations are not changes with "substantial impact," and, therefore do not necessitate an additional comment period. Those changes are merely technical in nature or clarify the language in the regulation.

Please note that Virginia Code § 2.2-4013(B) requires that all changes to the proposed regulation be highlighted in the final regulation, and it appears that this requirement has been fulfilled. Also, pursuant to § 2.2-4013(C), if the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may (but is not required to) direct DMAS to provide additional thirty days to solicit additional public comment on the changes. In addition, Virginia Code § 2.2-4015 requires the agency to solicit additional public comment, if it receives requests from at least twenty-five persons for an opportunity to submit oral and written comments on the changes to the regulation and if one or more changes with substantial impact were made to the proposed regulation.

If you have any questions, please contact me at 786-3890.

cc: Kim F. Piner
Senior Assistant Attorney General